

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

THE ESTATE OF JUAN R. AQUINO by its
Administrator RAFAEL AQUINO, and RUTH CONCEPTION,
individually
1364 Bronx River Avenue
Bronx, NY 10472

Plaintiff,

v.

**NOTICE OF REMOVAL OF
ACTION (28 U.S.C. § 1441(b))
Federal Question**

ERIE COUNTY HOLDING CENTER,
40 Delaware Avenue
Buffalo, New York 14202

ERIE COUNTY SHERIFF'S DEPARTMENT
10 Delaware Avenue
Buffalo, New York 14202

06 CV 0305

A (SR)

COUNTY OF ERIE,
Department of Law
69 Delaware Avenue, Suite 300
Buffalo, New York 14202

Civil Docket No.

THE CITY OF BUFFALO and
1 Niagara Square
Buffalo, New York 14202

THE POLICE DEPARTMENT OF THE CITY OF BUFFALO
74 Franklin Street
Buffalo, New York 14202

Defendants

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN
DISTRICT OF NEW YORK:**

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§1441(b) and 1446, Defendants, ERIE COUNTY HOLDING CENTER, ERIE COUNTY SHERIFF'S OFFICE, and THE COUNTY OF ERIE, hereby remove to this Court the civil action filed in the Supreme Court of the State of New York, County of Erie, as described below.

On April 19, 2006, Plaintiffs, THE ESTATE OF JUAN R. AQUINO by its Administrator

RAFAEL AQUINO, and RUTH CONCEPTION, individually ("Plaintiffs"), filed a civil action entitled, THE ESTATE OF JUAN R. AQUINO by its Administrator RAFAEL AQUINO, and RUTH CONCEPTION, individually v. ERIE COUNTY HOLDING CENTER, ERIE COUNTY SHERIFF'S OFFICE, THE COUNTY OF ERIE, THE CITY OF BUFFALO and THE POLICE DEPARTMENT OF THE CITY OF BUFFALO Case Index Number: I 2006-3785, in the Supreme Court for the State of New York, County of Erie.

On or about April 19, 2006, Defendants ERIE COUNTY HOLDING CENTER, ERIE COUNTY SHERIFF'S OFFICE, THE COUNTY OF ERIE, were served with the Summons and Complaint in the above-referenced state court action. On May 8, 2006, Defendants ERIE COUNTY HOLDING CENTER, ERIE COUNTY SHERIFF'S OFFICE, THE COUNTY OF ERIE, were served with the Answer of Defendants THE CITY OF BUFFALO and THE POLICE DEPARTMENT OF THE CITY OF BUFFALO. Copies of all relevant process and pleadings in this state court action are attached hereto as Exhibits "A" and "B".

No further proceedings have been had in the state court action. Plaintiff's complaint alleges false arrest, assault, battery, wrongful death, pre-impact terror, excessive force, libel and slander, negligent infliction of emotional distress, intentional infliction of emotional distress, loss of services and denial of personal liberty in violation of 42 U.S.C. §1983.


Accordingly, this Court has original jurisdiction over the state court action under 28 U.S.C. §1331 (federal question) because it is a civil action that arises under the Constitution, laws, or treaties of the United States.

All Defendants named in the state court action, have been served. The THE CITY OF BUFFALO and THE POLICE DEPARTMENT OF THE CITY OF BUFFALO have consented to the removal of this action. No previous application has been made for the relief requested herein.

Dated: May 9, 2006

Respectfully submitted,
LAURENCE K. RUBIN, Erie County Attorney
Attorney for the Defendants
COUNTY OF ERIE, ERIE COUNTY HOLDING
CENTER, and the ERIE COUNTY SHERIFF'S
OFFICE

By:


George Michael Zimmermann, Esq.
First Assistant County Attorney
69 Delaware Avenue, Suite 300
Buffalo, New York 14203
Telephone: 716-858-2200
Zimmermg@erie.gov

TO: Alexander D. Fotopoulos, Esq.
Fotopoulos, Rosenblatt & Green
Attorneys for Plaintiff
4160 Broadway, 2nd Floor
New York, New York 10033
(212) 781-2111

David Swarts, Clerk
County of Erie
25 Delaware Avenue
Buffalo, New York 14203

CC: Edward Taublieb, Esq.
Corporation Counsel's Office
Attorneys for Defendant CITY OF BUFFALO
1100 City Hall
Buffalo, NY 14202
(716) 851-4343

Index of Documents
Filed in State Court, Prior to Removal

<u>Document</u>	<u>Date of Filing</u>
Summons	April 19, 2006
Complaint	April 19, 2006
Answer by City of Buffalo	May 6, 2006

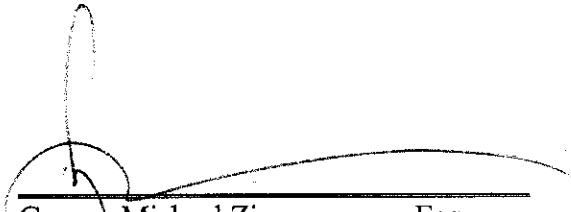
CERTIFICATE OF SERVICE

The undersigned, attorney for the Defendants COUNTY OF ERIE and ERIE COUNTY SHERIFF'S DEPARTMENT, hereby certifies that on May 9, 2006, he caused a true and correct copy of the foregoing Notice of Removal to be served upon the plaintiff and co-defendants in this action, by causing the same to be delivered via first class mail/ postage prepaid to their attorneys at the following addresses:

Alexander D. Fotopoulos, Esq.
Fotopoulos, Rosenblatt & Green
Attorneys for the Plaintiff
4160 Broadway, 2nd Floor
New York, New York 10033

Edward Taublieb, Esq.
Corporation Counsel's Office
Attorneys for Defendant CITY OF BUFFALO
1100 City Hall
Buffalo, NY 14202

Dated: Buffalo, New York
May 9, 2006



George Michael Zimmermann, Esq.
First Assistant County Attorney
69 Delaware Avenue, Suite 300
Buffalo, New York 14203
Telephone: 716-858-2200
Zimmermg@erie.gov